

1 Please explain to me, Mr. Roberts, how the  
2 communications and comments that Mr. Davis made in  
3 that newspaper article we were just discussing would  
4 violate the Merit System rules and regulations or  
5 SOPs of the fire department?

6 A. I would have to look at the rules and  
7 regulations of the Merit System and not quote them  
8 off the top of my head. But I believe it will tell  
9 you something about talking with the media. If it  
10 is not there, then I would have to review the  
11 SOP, and I do not know the fire or police SOP by  
12 heart.

13 Q. Well, then let's review it. Exhibit 3,  
14 which is an excerpt from the Merit System rules and  
15 regulations. And to shorten this, you may want to  
16 look at page 3 of this document, Section 2.054,  
17 where it addresses the subject matter of free  
18 speech. And tell me when you're finished reading  
19 that section.

20 A. I've read it, sir.

21 Q. Is this the section of the Merit System  
22 rules and regulations that you were just trying to  
23 recall when I was asking you questions about the  
24 counseling form that was issued to David Davis?

25 A. That's correct.

1           Q. Please tell me, if you can, which comments  
2       that Mr. Davis made in the newspaper article and was  
3       quoted would impair discipline and harmony in the  
4       workplace under Section 2.054 of the Merit System  
5       rules and regulations?

6           A. I believe the headline itself as stated,  
7       the alarm -- three alarm --

8           Q. Turmoil?

9           A. Yes, sir. I think that's going to cause  
10      turmoil in the fire department, because I do not  
11      believe a hundred percent of my firefighters or the  
12      city's firefighters -- let me correct myself --  
13      believes this. One hundred percent of our  
14      firefighters are not disgruntled with their job.

15           And I also believe that it could impede job  
16      performance on any negative quote by any city  
17      employee in the paper that, you know, that could  
18      cause someone to be intimidated against or feel peer  
19      pressure from them, such as what's been the case in  
20      the fire department.

21           Q. Okay. Anything else that would indicate  
22      how Mr. Davis's comments in the newspaper article  
23      would have impaired the discipline and harmony in  
24      the fire department?

25           A. Not right off the top of my head.

1           Q. Okay. Same question with regard to the  
2 next provision in this free speech section of the  
3 Merit System rules and regulations. Can you give me  
4 an example of how Mr. Davis's comments in that  
5 newspaper article would impede job performance?

6           A. Well, it's just like I said. I think it  
7 can -- by peer pressure.

8           Q. I'm sorry. What do you mean by that?

9           A. You know, I -- in organized labor, you  
10 know, you can exert some force on nonunion workers,  
11 and I think that has been shown to work in all  
12 realms, whether it be firefighters, electricians,  
13 plumbers, steamfitters, whatever. And I think some  
14 of that, in my opinion, was evident.

15          Q. Well, do you think Mr. Davis's comment in  
16 the newspaper article about poor employee morale in  
17 the department, do you think that impeded job  
18 performance?

19          A. I think it could have, yes, sir, I do.

20          Q. I don't want to know if it could have. Did  
21 it actually?

22          A. I do, yes.

23          Q. Could you explain that happening?

24          A. Well, there --

25          Q. Or give me examples?

1           A. -- again --

2           THE REPORTER: I just can't get it down  
3           when you're talking over each other.

4           MR. WOODLEY: We can take a break.

5           (Brief recess.)

6           Q. Mr. Roberts, I think we were addressing the  
7           Section 2.054 of the Merit System rules and  
8           regulations concerning the subject of free speech.  
9           And I wanted to follow up on those questions by  
10          asking you again, in light of the comments that you  
11          are aware of that Mr. Davis made in that newspaper  
12          article in September 2005, which of those comments,  
13          if any, would have impeded job performance by him or  
14          others in the fire department?

15          A. Let me try to answer it this way, see if  
16          I -- anything that's going to deal with safety,  
17          equipment, morale, the general public don't --  
18          they're not familiar with fire department  
19          operations. It gives a bad image in the total  
20          concept of the operations, and it's really not a  
21          true one, and it doesn't need to be in the paper  
22          like that.

23          Q. Do you think --

24          A. It should be factual.

25          Q. Do you think the citizens and members of

1       the public have a right to know and receive  
2       information about the operations of their fire  
3       department?

4           A. If they get the proper perspective they do.

5           Q. And when you say proper perspective, would  
6       that be consistent with your personal opinion of the  
7       fire department? In other words, whatever the  
8       firefighters happen to say should be?

9           A. I think the majority of the operations with  
10      the fire department have the true opinions and know  
11      what's being done to correct any negatives.

12          Q. Okay. Were there any comments in that  
13      newspaper article by Mr. Davis that were untruthful  
14      as far as you know?

15          A. I felt like they were.

16          Q. Which ones?

17          A. I think anytime you talk about the  
18      staffing. I think the staffing is fine. I think we  
19      man the vehicles. I think we man all fire  
20      apparatus. I think we man the rescue trucks. I'm  
21      not totally convinced -- totally not convinced that  
22      the equipment was all that bad. We had some old  
23      pieces of equipment; of course, due to budget  
24      restraints you don't buy new engine apparatus every  
25      day. And, too, the training. Some of the things

1       that he talks about in the article to me does impede  
2       job performance and, you know, it can touch back on  
3       the bottom -- personal loyalty to any of those. I  
4       think it could hurt the loyalty of some of your  
5       people as it relates to it.

6           Q. Well, sir, I'm not aware that Mr. Davis was  
7       quoted, as I read this newspaper article, on the  
8       subject of staffing or understaffing or the subject  
9       of training. He was quoted as morale being at the  
10      lowest that he's seen it in the fire department.  
11      And he was quoted again in the article about being  
12      concerned about potential fear and retaliation or  
13      being disciplined or fired. But I don't see  
14      anywhere in this article where Mr. Davis -- excuse  
15      me -- was quoted about training or staffing  
16      concern.

17           A. Well, I think, number one, he puts it this  
18      way; he relates to reluctant to talk of -- let's see  
19      how he put it. We're reluctant to talk about it  
20      because of fear of retaliation and being disciplined  
21      or fired. He's talking about the problems inside  
22      the fire department. To me, I'm taking that he's  
23      talking about everything we've been discussing,  
24      which doesn't, to me, impede job performance, bottom  
25      line.

1           Q. So your reading into his quote that he's  
2 got fear or concern about retaliation or being  
3 disciplined or fired, you're reading that as  
4 criticism of training and understaffing. Is that  
5 what you're telling me?

6           A. I'm reading anything he's saying that's  
7 detrimental to the fire department, going back to  
8 the complaints throughout the entire course of media  
9 publicity is detrimental to the fire department.

10          Q. So bottom line is anytime a firefighter  
11 criticizes the fire department and it gets in the  
12 media, that's going to be bad for the fire  
13 department?

14          A. It could be, yes, sir. It could be -- it  
15 could be.

16          Q. And you would consider that wrong on the  
17 part of the firefighter and a violation of the Merit  
18 System's rules and regulations; is that fair?

19          A. Yes, sir, it is.

20          Q. Let me ask you a series of questions, which  
21 you were here when I addressed them with Chief  
22 Hunter in his deposition earlier today. Based upon  
23 your experience with the city and particularly your  
24 capacity as city manager, would it be a violation by  
25 a firefighter here in the city -- a violation of the

1 Merit System rules and regulations if that  
2 firefighter did not follow the so-called chain of  
3 command?

4 A. I do. I believe that.

5 Q. Okay. And, specifically, if the  
6 firefighter did not follow or pursue the chain of  
7 command and spoke directly with the media  
8 representative on the subject of inadequate staffing  
9 in the fire department, would you consider that to  
10 be a violation of the Merit System rules and  
11 regulations?

12 A. Yes, sir.

13 Q. Would you consider that firefighter then to  
14 be subject to discipline, perhaps firing, as a  
15 result?

16 A. I would consider -- I would think that he  
17 would fall in whatever category of Merit System  
18 offense that was, whether it be termination,  
19 suspension, written counseling statement.

20 Q. And, sir, in your capacity as city manager,  
21 would a firefighter violate Merit System rules and  
22 regulations if he did not follow the chain of  
23 command but spoke directly to the media about health  
24 and safety of firefighters on the job?

25 A. I do feel that would be a violation of the

1 Merit System.

2 Q. And would that individual firefighter then  
3 be subject to potential discipline or firing?

4 A. I think so.

5 Q. Same question. Would the firefighter  
6 violate the Merit System's rules and regulations and  
7 be subject to discipline if he bypassed the chain of  
8 command and spoke directly to the media about  
9 inadequate protective gear or inadequate fire  
10 department equipment and vehicles?

11 A. I feel it's a violation of the Merit  
12 System.

13 Q. And that individual be subject to  
14 discipline or firing, correct?

15 A. Correct.

16 Q. Would it be a violation of the Merit System  
17 rules and regulations if a firefighter bypassed the  
18 chain of command and spoke directly to a media  
19 representative about concerns he had over response  
20 times or inadequate dispatching procedures in the  
21 fire department?

22 A. I feel that would be a violation.

23 Q. And would it also be a violation of the  
24 Merit System rules and regulations, subjecting a  
25 firefighter to discipline or firing, if he bypassed

1 the chain of command and spoke directly to a media  
2 representative about employee morale in the fire  
3 department?

4 A. I feel it would be a violation.

5 Q. Would it also be a violation of the Merit  
6 System rules and regulations if a firefighter  
7 bypassed the chain of command and spoke directly to  
8 a media representative about public safety related  
9 to fire department operations?

10 A. I would think so. There are certain  
11 procedures on the ground where they've got ways of  
12 doing it through the chain.

13 Q. What do you mean specifically by that?

14 A. They have got ways to talk with people and  
15 get it to whomever they need to talk with.

16 Q. On all of those subjects I just covered --  
17 staffing, health and safety of firefighters,  
18 protective gear, equipment in the fire department,  
19 morale, safety -- would it be a violation of the  
20 Merit System rules and regulations if a firefighter  
21 addressed those issues directly with the city  
22 council without pursuing it through the the chain of  
23 command?

24 A. I think it would be, yes.

25 Q. And would that individual firefighter then

1       be subject to discipline or potential firing if he  
2       addressed those issues directly with the city  
3       council without going through the so-called chain of  
4       command?

5           A. I think it would be.

6           Q. Okay. Has that ever happened? Has a  
7       firefighter ever gone to a council meeting and stood  
8       up and addressed a fire department issue?

9           A. In my 34 years? No, sir. We -- not to my  
10      knowledge now. That's -- that's not to say I have  
11      been to every council meeting, but there have been  
12      times when they would address budget hearings, when  
13      the chief would ask some to talk years ago. Now we  
14      have our budget hearings, you know, in this room  
15      here, and the chiefs present their cases at that  
16      time.

17           Q. Have any city police officers and/or  
18      representatives of the FOP ever talked directly to  
19      the news media about issues of concern in the Police  
20      Department?

21           A. Not to my knowledge.

22           Q. Now, going back to Exhibit 15, which is the  
23      memo again from Chief Hunter to members of the  
24      Phenix City Fire Department dated September 20,  
25      2005, is it your understanding that the Chief

1 distributed that to all the employees in the city's  
2 fire department?

3 A. It was distributed to all the employees of  
4 the city.

5 Q. Okay. But this, in particular, looks like  
6 it was distributed by Hunter to members of the fire  
7 department. Is that your understanding?

8 A. That's correct.

9 Q. Okay. And did he do this with your prior  
10 knowledge and approval?

11 A. He did.

12 Q. Okay. And did you authorize a similar memo  
13 to be distributed to all City employees?

14 A. Yes, I did.

15 Q. And it required apparently all of the  
16 firefighters, as well as all City employees, to sign  
17 off that they had received or read this?

18 A. We would like some type of record that they  
19 received -- that each one received a copy of this  
20 memo.

21 Q. Did you receive any objections from any  
22 city employees or firefighters about the substance  
23 of this memo?

24 A. I have not, no, sir.

25 Q. Have you heard that anyone objected to it?

1           A. No, sir.

2           Q. And we discussed earlier with Chief Hunter  
3 Exhibit 34, which appears to be a memorandum from  
4 you, sir, as the city manager dated September 20,  
5 2005, to all employees. And is this the kind of  
6 memorandum that was distributed to the city workers?

7           A. That's correct.

8           Q. Okay. Let's move on to Exhibit 17,  
9 Mr. Roberts. This appears to be a letter addressed  
10 to you dated January 31, 2006, from a gentleman  
11 named Harold A. Schaitberger, general president of  
12 the International Association of Firefighters. Do  
13 you remember receiving this letter shortly after its  
14 date?

15          A. I do.

16          Q. And copies were evidently also sent, you  
17 can see at the end of the letter, to Mayor Hardin  
18 and Fire Chief Hunter. Do you see where it says  
19 that?

20          A. I do.

21          Q. When you received this letter, what was  
22 your reaction to it? Were you annoyed? Were you  
23 upset? Anything like that?

24          A. Not annoyed or upset per se. I called the  
25 Chiefs in and wanted to know what the letter was

1       about. I didn't know of anything going on at this  
2       particular time.

3           Q. Didn't know anything what?

4           A. Any conflict that was going on at this  
5       particular time. And I believe it was Chief Waters  
6       said he would talk with David Davis about the  
7       letter.

8           Q. Did you ask Chief Hunter to look into it  
9       and get back to you?

10          A. I think Chief Hunter was already looking  
11       into it, yes.

12          Q. But did you expect him to get back to you  
13       at some time?

14          A. Yes, sure.

15          Q. And among other things in this letter,  
16       Mr. Schaitberger is addressing concerns about the  
17       shift schedule, the risks or possibility of  
18       implementing an 8-hour shift as opposed to the  
19       existing 24-hour schedule. And, among other things,  
20       also addressing a concern that Mr. Davis was issued  
21       a counseling form on September 20, 2005, concerning  
22       his interview and statements to the local media. Do  
23       you see where it says that?

24          A. I do.

25          Q. And then Mr. Schaitberger is outlining

1       certainly legal principles under the First  
2       Amendment; for example, the right that public  
3       employees have to free association under the First  
4       Amendment. Were you aware of those protections,  
5       those constitutional rights, before you got this  
6       letter from Mr. Schaitberger?

7           A. I'm aware of the First Amendment rights,  
8       yes, sir, and I do feel like that our First  
9       Amendment rights are -- we give them their due  
10      diligence as well with them, and there's procedures  
11      for that.

12          Q. Have you been aware for a number of years  
13      that the First Amendment also protects the right of  
14      public employees to free speech?

15          A. I do under the guidelines that's given,  
16      yes, sir.

17          Q. And have you been aware for a number of  
18      years as city manager that it's a violation of the  
19      First Amendment protections for public employees to  
20      be disciplined or retaliated against if they are  
21      exercising their First Amendment rights to free  
22      speech and free association?

23          A. As long as it's done in the proper  
24      perspective.

25          Q. What was the follow-up? You get this

1 letter. You talk to Chief Hunter, what's going on.  
2 You expect he's going to get back to you. Did he  
3 get back to you?

4 A. Yes, sir. They had letter. I believe it  
5 was some -- David said there wasn't any problems.

6 Q. Okay. Exhibit 18, this appears to be a  
7 memo from Deputy Chief Roy Waters to Chief Hunter  
8 dated February 6, 2006, and it's concerning the  
9 letter Schaitberger had sent to you. Did you  
10 receive a copy of this memo?

11 A. I did.

12 Q. On or about the date of it in February  
13 2006?

14 A. Uh-huh.

15 Q. That's a yes?

16 A. Yes, sir. I'm sorry.

17 Q. So when you received a copy of this memo,  
18 you understood, I take it, that there had been a  
19 discussion between Deputy Chief Waters and  
20 Mr. Davis, correct?

21 A. As indicated in the letter, yes, sir.

22 Q. All right. Did you take any further action  
23 or think anything further was necessary on this  
24 subject?

25 A. I did not.

1           Q. And then you sent a reply letter back to  
2 Mr. Schaitberger which appears as Exhibit 20 dated  
3 February 14, 2006; is that correct?

4           A. That's correct.

5           Q. And you indicate in part in this letter  
6 that the Deputy Chief spoke with Mr. Davis upon  
7 receipt of your letter, and Mr. Davis expressed that  
8 he thought everything in the department was going  
9 good and that he did not have any complaints?

10          A. I used Chief Waters' letter and put what  
11 was reported to me.

12          Q. Okay.

13          Q. Then at some point did it come to your  
14 attention, Mr. Roberts, that Mr. Davis had placed a  
15 telephone call to Mayor Hardin sometime in April of  
16 2006?

17          A. Yes, sir.

18          Q. How did that first come to your attention?

19          A. To be honest with you, I don't really  
20 remember. I believe it was Chief Hunter that  
21 explained it to me or told me about it.

22          Q. In a conversation?

23          A. Yes, sir.

24          Q. And what did he tell you about it?

25          A. In general terms, basically that the Mayor

1 had been contacted by Mr. Davis in relation to a  
2 proposed change in probationary time.

3 Q. Probationary time for new hires into the  
4 fire department?

5 A. For new hires within three departments, all  
6 of our public safety, which is, of course, our  
7 police, code enforcers, and, of course, the fire  
8 department.

9 Q. But is it fair and accurate to say that  
10 since Mr. Davis was an 8-year employee of the fire  
11 department, that this proposed extension of the  
12 probationary period from one year to 18 months would  
13 have not directly affected him? Is that a fair and  
14 accurate statement?

15 A. It would not have affected him at all.

16 Q. Was it your understanding, based upon the  
17 information that you have been given, that Mr. Duty  
18 placed the telephone call to Mayor Hardin in April  
19 of 2006 when --

20 MR. GRAHAM: You said Mr. Duty?

21 Q. I'm sorry. Is it your understanding, based  
22 upon the information that you were given, that David  
23 Davis, when he placed the call to Mayor Hardin in  
24 April of 2006, was off duty at the time?

25 A. I don't remember asking that. I don't

1 know.

2 Q. Okay. Do you know if Mr. Davis -- or did  
3 you receive any information that Mr. Davis had  
4 placed that call to the Mayor in Mr. Davis' capacity  
5 as president of the firefighters local labor  
6 association?

7 A. The only thing the Mayor told me was that  
8 David had called concerning the proposed change in  
9 probationary time.

10 Q. Okay.

11 A. Now, I would have assumed it would have  
12 been as a officer of the local or as a firefighter,  
13 either/or.

14 Q. When you say assume, do you have any  
15 personal knowledge that it might have been in his  
16 capacity as president of the local union?

17 A. Well, he's both, so I assumed it would be  
18 that, yes.

19 Q. Do you know or do you have any information  
20 that Mr. Davis addressed any other issues when he  
21 spoke to the Mayor by telephone other than extending  
22 the probationary period?

23 A. I do not know any other information on  
24 their phone call.

25 Q. When you were told by Chief Hunter that